Davis Electric Wallingford Corporation and Merritt Extruder Corporation *and* United Steelworkers of America, AFL–CIO. Cases 34–CA–5495, 34–CA–5790, 34–CA–5796, 34–CA–5811, 34–CA–5831-1,

August 16, 1995

DECISION AND ORDER

BY MEMBERS STEPHENS, COHEN, AND TRUESDALE

On December 21, 1993, Administrative Law Judge Harold Bernard Jr. issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions, as explained below, and to adopt the recommended Order.

1. The judge found that the Respondent, Davis Electric Wallingford Corporation (Davis) and Merritt Extruder Corporation (Merritt), constitute a single employer. He also found that the Respondent violated Section 8(a)(1), (3), and (5) by removing and reassigning engineering unit work in February and June 1992. He further found that the Respondent violated Section 8(a)(1) and (5) of the Act by laying off engineering employees on November 20, 1991, subcontracting production and maintenance unit work commencing June 1992, and refusing to furnish information requested by the Union in August 1992. We adopt these findings, but with regard to the violation involving the November 20 mass layoff we provide further explanation of our finding that the Union did not waive its right to bargain over the layoff.

The Respondent is engaged in the manufacture and sale of extrusion machinery for customers in the wire and cable industry at a plant located in Wallingford, Connecticut. Alexander Guthrie is the chief executive officer, the president, a director, and a shareholder of both Davis and Merritt. Since 1970, the production and maintenance employees of the Respondent have been represented by the United Steelworkers of America, AFL–CIO. In 1991,[2] the Union organized the Respondent's engineering employees and became their exclusive representative on October 7.[3] James F. Chieppo, the Union's subdistrict director, is responsible for representing the employees in both units and conducting contract negotiations with the Respondent for each unit. Through statements by Guthrie, the Respondent violated Section 8(a)(1) of the Act when he disparaged the effectiveness of Chieppo as the employees' representative and when he also solicited employees to overrule and replace Chieppo as their representative.[4]

On November 13 or 14, Tom Oravits, the Respondent's engineering vice president, announced to the Davis engineering employees that they would be laid off effective November 20, which was the day before Thanksgiving. Among the unit employees present were Robert Augustine and Vinnie Cassarino, who had been active leaders in the Union's recent 1991 organizing campaign.[5] Oravits told the assembled employees that the reason for the impending layoff was a lack of work. Upon hearing this announcement, Augustine considered the layoff to be ''a decision cast in stone already'' and felt that he ''didn't have a choice.''

The Respondent never notified Chieppo about the scheduled layoff before Oravits' statement to the employees that day or before Guthrie's decision was actually implemented on November 20. Rather, on either November 18 or 20,[6] Chieppo heard about the impending layoff from Augustine who had unsuccessfully tried to contact him earlier. The Respondent gave no explanation why it did not tell, or could not have told, Chieppo prior to Oravits' direct announcement to the employees. Based on this lack of explanation, we draw the reasonable inference that the Respondent's failure to contact Chieppo was but another example of its animosity towards the engineering employees' chosen bargaining representative.

Before Oravits' announcement, Guthrie had decided to lay off, en masse, the Davis engineering employees, an action unprecedented in that department. Guthrie testified that he reached his decision after reviewing company records which purportedly show a lack of work for the engineering employees and a very bad economic situation for the Respondent during that period. The judge, however, found that the company records, which had been relied on by Guthrie and were

[1] The Respondent has implicitly excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] All dates are in 1991 unless otherwise indicated.

[3] There were no exceptions to the appropriate unit findings set forth in sec. I,C, of the judge's decision.

[4] There were no exceptions to these findings set forth in sec. II,A, of the judge's decision.

[5] Augustine and Cassarino would later serve as members of the employees' committee when contract negotiations between the Union and the Respondent commenced in March 1992.

[6] On either November 18 (Augustine's account) or 20 (Chieppo's account), Augustine finally reached Chieppo and told him about the layoff decision. The judge found it unnecessary to resolve this credibility dispute. We agree.

put into evidence by the Respondent, failed to support any lack of work orders.[7]

The judge found that the Union did not clearly and unmistakably waive its right to bargain over the November 20 layoff because it had been confronted with a fait accompli and was thus denied a reasonable opportunity to bargain. In its exceptions, the Respondent argues, inter alia, that it satisfied its statutory obligation to notify the Union either when Augustine and Cassarino, two active union leaders, heard Oravits' layoff announcement on November 13 or 14 or when Chieppo subsequently heard about the layoff from Augustine 1 or 2 days before the layoff occurred. We find it unnecessary to decide whether notice was sufficient in either instance because we agree, for the reasons below, that Oravits' announcement on November 13 or 14 was an announcement of a final and unqualified decision by the Respondent.

First, the uncontroverted evidence reveals that Oravits announced the layoff decision in definite terms with a specific date assigned and a specific reason attached. Oravits never testified that he was at all tentative about the layoff in his communication to the employees that day. In fact, we note from Oravits' own testimony that he never viewed the layoff decision by his boss, the chief company official, as only a possible plan under consideration by the Respondent. Therefore, for Oravits' announcement to have expressed or intimated a contrary view would not have made sense. This is borne out by Augustine's credited description of Oravits' layoff announcement as ''cast in stone'' and one that left Augustine with no choice.[8]

Second, according to Guthrie's testimony, the whole layoff matter was an inescapable conclusion and he was forced to take such drastic action because the Respondent was faced with a dire economic situation in that no work orders were available for Davis engineering employees. The judge found that this was not true. In this regard, he noted the uncontroverted testimony by Cassarino that substantial unit work was performed during the layoff period. In addition, the judge observed key deficiencies in the company records relied on by Guthrie. In this context, and in light of the other instances of unlawful conduct by the Respondent designed to undermine the engineering employees' recent union organizing and their chosen representative, we find that Oravits' direct communication to the employees carried the following dual message: the Respondent had no intention of changing its mind about the layoff and the Union would have no effective role to play in this predetermined action against the engineering employees.[9] Thus, we find that the Respondent had no intention to enter into good-faith bargaining over the November 20 layoff and any request by the Union would have been futile.[10] Therefore, we adopt the judge's conclusion that the Respondent unilaterally laid off its engineering unit employees in violation of Section 8(a)(5) and (1) of the Act.

2. We further agree with the judge's conclusion that the Respondent constructively discharged Robert Augustine on August 11, 1992, in violation of Section 8(a)(1) and (3) of the Act. However, we wish to clarify his legal analysis. He simply applied a *Wright Line* test.[11] However, as noted, the allegation is that Augustine was constructively discharged. The test for such cases is set forth in *Crystal Princeton Refining Co.*,[12]

> [t]here are two elements which must be proven to establish a ''constructive discharge.'' First, the burdens imposed upon the employee must cause, and be intended to cause, a change in his working conditions so difficult or unpleasant as to force him to resign. Second, it must be shown that those burdens were imposed because of the employee's union activities.

The *Wright Line* test applies to the second element of *Crystal Princeton.* In Augustine's situation, we find

[7] We agree with the judge that the record shows that engineering unit work was available during the layoff period.

[8] Cf. *Owens-Corning Fiberglas*, 282 NLRB 609 fn. 1 (1987). In that case, the Board held that the gravamen of the employer's offense was not that it had worked out a plan for a change in working conditions before announcing to the union its intention to implement that plan on a particular date, but rather the management officials' announcement to the union indicating that nothing could be done about the plan.

[9] In *WPIX, Inc.*, 299 NLRB 525 fn. 4 (1990), the Board majority found that the employer had not presented the union with a fait accompli in announcing the change in the mileage reimbursement rate for employees. However, in that case, unlike the instant situation, there was no evidence of union animosity to suggest that the employer ''was firmly committed to implementing the change regardless of the Union's desire to bargain over this issue.'' Id.

We also find *Medicenter, Mid-South Hospital*, 221 NLRB 670 (1975), and *YHA, Inc. v. NLRB*, 2 F.3d 168 (6th Cir. 1993), denying enf. to 307 NLRB 782 (1982), which are cited by the Respondent in support of its waiver defense, to be distinguishable from the instant case. In *Medicenter*, no violation of the Act was found because, inter alia, the company official there, unlike Guthrie here, did not finalize his decision to institute the change in company policy until after his meetings and discussions about the change with the union business agent. Likewise, in *YHA*, unlike here, there was union involvement before the change in company policy became a final decision. In fact, according to the court's view of the evidence in *YHA*, the employer had told the union president about the policy change on several occasions, yet the union waited until the last minute to submit its bargaining request.

[10] See *Gratiot Community Hospital*, 51 F.3d 1255 (6th Cir. 1995), enfg., in relevant part, 312 NLRB 1075 (1993). In affirming the Board's decision, the court found no waiver of the union's right to bargain over the change in the scrub uniform policy for nurses because the Hospital's communications left the union ''with the impression that the Hospital was not willing to enter into good-faith bargaining.'' Id.

[11] 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

[12] 222 NLRB 1068 (1976).

that the General Counsel met his burden and proved both elements for establishing a constructive discharge.

On November 20, 1984, Robert Augustine began working as a design draftsman in the Davis engineering department. At all material times, Augustine's work performance has been satisfactory or better.

In 1991, Augustine initiated and was primarily responsible for the Union's campaign to organize the engineering employees. As previously indicated, this campaign culminated on October 7, 1991, when the Union was certified as the exclusive representative of the engineering employees. Thereafter, Augustine became unit chairperson and served on the employee committee for the contract negotiations between the Union and Davis.

The judge found that the Respondent was aware of Augustine's prounion activities and that it had demonstrated considerable antiunion animus throughout this period. He further found that the ''Respondent engaged in numerous acts against Augustine which foreseeably created intolerable working conditions and forced him to quit.'' These acts referred to by the judge can be summarized as follows: unlawfully laying off the engineering unit employees, including Augustine, on November 20, 1991;[13] subjecting Augustine to greater pressure to work harder and more closely observing him after his return to work from layoff on January 6, 1992; moving Augustine's usual work station closer to the engineering vice president's office to prevent Augustine from speaking with any employee; subjecting Augustine to a steady succession of short-term layoffs and recalls; failing to notify Augustine not to return to work on May 4, 1992, when the Respondent knew, in advance, that work would not be available for him that day; and laying him off on June 9, 1992, in the midst of an unfinished work project.

Against this backdrop, the judge examined the events of mid-August 1992. On August 8, Tom Oravits, the Respondent's engineering vice president, left a message on Augustine's answering machine about having ''something for [him] to do'' without giving any specifics. Three days later, Alexander Guthrie, the Respondent's president, called Augustine while he was at work at Hall Industries.[14] Guthrie asked Alexander to write a letter of resignation. Augustine refused to do so. He pointed out to Guthrie that he had not resigned, but had been laid off. Augustine testified that Guthrie then pressed him about returning on August 17, 1992, and he told Guthrie that ''he didn't think so'' and would call his Supervisor David Pepe to pick up his things. According to Augustine, he replied in this fashion to quickly conclude the call with Guthrie because a Hall supervisor was present nearby.

That afternoon, Augustine went to the Respondent's facility. He spoke with Pepe to try to get information about the specific project for which he was being asked to return to work on August 17. Augustine credibly testified that he was concerned that this recall would be for another short-term project and told Pepe that ''he had a family to worry about, financial responsibilities and couldn't afford to be bounced back and forth like a yo-yo on a psychological roller coaster the company was putting him through, that he needed a steady job and couldn't deal with the bull-shit.'' The judge found that instead of ''offering plausible reasons for [the] Respondent's conduct towards Augustine, Pepe agreed with Augustine saying it was a lousy way to live, adding he had no control over the situation.''

In these circumstances, we find that Augustine did not voluntarily quit his employment. Rather, the actions taken against Augustine, beginning November 20, 1991 through August 11, 1992, caused, or were intended to cause, a change in his working conditions so difficult or unpleasant as to force him to resign and were imposed on him because of his union activities.[15] We note that on August 11 Augustine was never given any assurance of job security or stability by Guthrie and that Pepe's reaction to Augustine's inquiry about his return to work confirmed Augustine's worst fears of future mistreatment by the Respondent. Accordingly, we conclude that Augustine was constructively discharged in violation of Section 8(a)(1) and (3) of the Act.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Davis Electric Wallingford Corporation and Merritt Extruder Corporation, Wallingford, Connecticut, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[13] Augustine had never before been laid off during his employment with Davis.

[14] On July 20, 1992, Augustine started working for Hall Industries.

[15] See *La Favorita, Inc.*, 306 NLRB 203 (1992).

William E. O'Connor, Esq., for the General Counsel.
Brian Clemow, Esq., of Hartford, Connecticut, for the Respondent.

DECISION

STATEMENT OF THE CASE

HAROLD BERNARD JR., Administrative Law Judge. I heard the cases in Hartford, Connecticut, on April 26 through 30, 1993, following charges filed December 1991, and in August, September, and November 1992 by the Union leading to this consolidated complaint dated February 25, 1993, against the Employer (the Respondent). The consolidated

complaint[1] alleges that Davis Electric Wallingford Corporation (Davis) and Merritt Extruder Corporation (Merritt) constitute a single employer, and that said Respondent unilaterally laid off engineering department employees on November 20, 1991, threatened employees in production and maintenance with unspecified reprisals due to union activities, disparaged union representatives to employees, and solicited employees to replace them, deprived engineering department employees of work because of union activities and without notice to the Union, discharged Robert Augustine due to his union activities, unilaterally subcontracted production and maintenance work without notice to the Union, and refused the Union's requests for information relevant to the Union's representational duties thereby violating Section 8(a)(1), (3), and (5) of the Act.

Based on the entire record including briefs filed by counsel for the General Counsel (General Counsel) and Respondent as well as considering the witnesses' demeanor on the stand, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent makes and sells extrusion machinery for customers in the wire and cable industry at its plant located in Wallingford, Connecticut. Respondent admits in its answer to the complaint in Case 34–CA–5495 (G.C. Exh. 1e) that Davis Electric Wallingford Corporation annually purchases goods valued in excess of $50,000 directly from suppliers located outside Connecticut, and in its answer to the consolidated complaint (G.C. Exh. 1dd) that Merritt Extruder Corporation annually sells products valued in excess of $50,000 directly to customers located outside Connecticut as well as annually purchasing products valued in excess of $50,000 directly from suppliers located outside Connecticut. Based on this, I find that Respondent, hereinbelow found to be a single employer comprising both the Davis and Merritt companies, is an employer engaged in interstate commerce as defined in the Act. As further admitted, I find the Union is a labor organization as defined in the Act.

[1] The consolidated complaint entered in the formal exhibit file as (G.C. Exh. 1aa) fails to identify the first complaint against Respondent in Case 34–CA–5495, entered in the formal exhibit file as (G.C. Exh. 1c), nor does it contain the allegation in said earlier complaint that Respondent unilaterally laid off engineering employees in violation of Sec. 8(a)(5) of the Act. However, the Regional Director issued a separately appearing order consolidating Case 34–CA–5495 with the cases identified in the consolidated complaint in the interim between the issuance of the two complaints, although in a further error, the body in said interim order inadvertently refers to ''34–CA–5497.'' (G.C. Exh. 1z.) The formal papers containing the documents had earlier been served on the parties, and were shown to the parties again for their approval before the hearing began. The allegation was fully litigated at the trial, and it was specifically addressed by the parties' briefs without objection over the errors. Manifestly, the parties had notice that the complaint allegation in 34–CA–5495 would be heard before me and the above inadvertencies did not deny Respondent an opportunity to prepare for trial or in any way impair a full hearing on the merits nor has any such objection based on a contrary view been made.

A. *Davis and Merritt as a Single Employer*

Davis in its present corporate form began operations in 1987 manufacturing machinery and components for customers in the wire and cable industry, and was formed by Lucien Yokana, its chairman and president who had purchased the assets of another like company on his own and who later, on July 25, 1989, appointed his son, Alexander Guthrie, president. Guthrie became and remains the principal hands-on driving force in all phases of operations, and, in March 1991, he was able to double a credit line to do so and formed Merritt and the two companies collaborated to continue designing and manufacturing, in one form or type or another extruder, a machine which melts and pumps molten plastic or other forms against a head pressure to form an end shape and is designed to work in conjunction with other machines. Merritt is located in the same facility with Davis, and Guthrie is also Merritt's president as well as chief executive officer. His father, Lucien Yokana, the original founder of Davis, is chairman of both companies' boards of directors and four out of five directors in both companies are the same: Guthrie, Lucien Yokana, Lucien Yokana Jr., and Charles Joffin. The record shows that both companies are privately owned and, although Guthrie testified that there was no single controlling shareholder, it is clear that Guthrie and other family members including his father, Lucien Yokana, and brother, Lucien Yokana Jr., hold significant ownership interests in both Davis and Merritt. The only other Merritt shareholders identified in the record are: Vice President in Engineering Tom Oravits with a 13-percent interest, Manager for Electrical Engineering Ed Shannon, and Vice President in Sales Mike Perrigo, employees of a Lucien Yokana-purchased predecessor company to Davis, each of whom held a 2- to 3-percent interest, which they lost upon resignation pursuant to a covenant in their employment terms. Another family member, Andre Yokana, is vice president of finance for both companies. I consider all the foregoing, particularly the family member's extensive powerful roles, to be considerable and highly significant evidence of a common ownership or financial control over both companies.

Guthrie appointed three former managers from an earlier predecessor-like corporation of Davis to supervise Merritt operations: On May 15, 1991, he appointed Tom Oravits vice president of engineering for Davis, in addition to such post for Merritt, Ed Shannon as manager for electrical engineering in Davis in addition to such post in Merritt, and notified employees that David Pepe head of Davis electrical mechanical engineering would report directly to Oravits, and that Bob Banker would report to Ed Shannon as supervisor electrical design for Davis, all of which reflected a pattern of nearly identical common management and supervision over the two companies. He also ordered that Frank Ryszczyk, field supervisor, would report directly to Oravits. (G.C. Exh. 23.)

The integration in operations between the companies is manifested by Guthrie in an interview with an industry journal in March 1991 where he said, ''by virtue of the formation of Merritt Extruder Corp., Davis Electric becomes capable of furnishing complete systems to the wire and cable and fiber optic industries, bringing to them important innovations in extruder design which will be incorporated in the Merritt product line. This action will broaden the in-house technology base and significantly strengthen Davis Electric's

market position.'' (G.C. Exh. 29.) He testified to this purpose and its being furthered by creation of Merritt while on the stand. In a company brochure highlighting Merritt's facilities and management personnel, the production floor pictures admittedly show the Davis facility. (G.C. Exh. 31.) Another Merritt advertising brochure describes in glowing terms its production facilities,

> A well-equipped 30,000 square foot plant is home to Merritt Extruder. Production consists of inventory scheduling, control, precision machining, assembly, panel fabrication, systems integration and quality control slash [sic] testing operations. A close-knit team effort across all departments provides our customers with equipment that is not only of superior design, but manufactured to the highest standards. All Merritt equipment is tested prior to shipment. [G.C. Exh. 32.]

Guthrie confirmed on the stand that the functions referred to in this paragraph refer in part to the work done by Davis production and maintenance employees in the plant areas used by both companies. Still another advertising brochure contains representations of a Merritt/Davis machine and concludes with identification of the two firms as one company, which contents Guthrie described as accurate advertising. The ad directs the reader to contact Davis Electric for more information. (G.C. Exh. 34.)

Numerous functions are performed for both companies by the same individuals in addition to the supervisors and managers identified above, and these individuals are carried on the Davis payroll. Guthrie identified the employees as the receptionist, accounting manager, purchasing head, senior buyer, and regular purchasing employee, accountant for receivables and payables, stockroom clerk, engineering clerk, service manager, and Vice President Ted Palma. In addition Davis sales employees have sold Merritt extruders to their customers.

Further, Robert Augustine, a Davis design draftsman, testified he spent 50 percent of his time in the spring and summer 1991 performing Merritt design work under the supervision of Davis/Merritt Vice President of Engineering Tom Oravits. When performing Davis work he was supervised by both Davis Supervisors David Pepe and on occasion Oravits. Employees Robert Banker, Vincent Cassarino, Walter Bergonzi, shipping clerk Pat Donato, and William Kolendo, testified without contradiction to performing both so-called Davis and Merritt work on the same premises. Bergonzi, a leadman in mechanics for 8 years testified to dealing with both Pepe and Oravits, and Davis draftsmen who were out on the production floor to see how production and assembly were going, that he tracked down parts, did layout work, drilling, worked on assembly of machines in the Davis shop floor, and spoke with Oravits regarding Merritt extruders as a regular aspect to his duties. Kolendo worked as a Davis design engineer and after Merritt's formation designed parts or sections of the extruders for Merritt during hundreds of hours under Oravits' and Pepe's supervision, afterwards filling out a Davis timesheet. Cassarino as well described common supervision by Pepe and Oravits, the latter supervising him on both Davis and Merritt assignments. Coleen Darmofalski, engineering clerk assembles manuals, bills, materials, and drawings for engineering, including Davis and Merritt work, and is on the Davis payroll, and Service Manager Frank Ryszczyk works for both companies and is also carried on the Davis payroll.

Guthrie, ''In the interest of all Davis Electric/Merritt Extruder employees . . . declared a no smoking policy.'' by memo to all employees on May 15, 1991. (G.C. Exh. 25.) On February 6, 1992 Guthrie informed all employees by memorandum that,

> Davis Electric and Merritt Extruder will observe the President's day holiday on Monday February 17, 1992 and therefore, all Offices, Shop and Engineering facilities will be closed. [His initials.] [G.C. Exh. 27.]

Further exercising his authority and control in setting terms and conditions of employment for employees in both companies, Guthrie issued a memorandum under Davis Electric Merritt Extruder Corporation letterhead to ''all employees'' establishing a companywide sexual harassment policy. The memorandum identifies Davis Electric/Merritt Extruder as ''an equal opportunity employer. '' It further informs employees that ''employment decisions at Davis Electric/Merritt Extruder are made on the basis of the employee's qualifications, merit and the needs of the *company*.'' (Emphasis added.) Guthrie names himself and Oravits as responsible for receiving employee reports. (G.C. Exh. 28.) Guthrie and Oravits set rates of pay and benefits for Merritt employees. Guthrie is also chief spokesperson for Davis and sets the working conditions for Davis employees; it was Guthrie who decided to lay off engineering employees in November 1991 and who made subcontracting decisions addressed by the complaint herein.

Guthrie testified that the Company has no internal accounting procedure to distinguish between the hours employees he termed overhead employees, such as Pat Donato, perform work for Davis as contrasted with the hours they spend working for Merritt. Donato works as shipping and receiving clerk with 19 years at this Davis position wherein he ships parts, machines, prepares bills of lading, packing slips, receives parts, and maintains inventory for both Davis and Merritt. He handles the work about the same for each company but his hours doing work for Merritt are not distinguished from the hours he works for Davis. While Guthrie alleged that some employees in such situations keep a separate record, it is undenied that even such employees are paid on a single Davis Electric paycheck. More significantly, Guthrie admitted that although Merritt made up 50 percent of the business for the enterprise last year and that Davis ''charges'' Merritt for the cost of production work performed by Davis, no payments change hand between the companies throughout the year or at the yearend so-called ''balancing,'' Merritt remaining in an ''outstanding debt position.'' He also admitted that Merritt pays no rent to occupy the plant facilities, Davis alone making such payments. Equally telling is Guthrie's clear testimony that when Davis does work for Merritt manufacturing a machine it only charges Merritt for its costs and not for profit.

B. *Analysis*

Whether or not Davis and Merritt constitute a single employer is a question governed by well-settled law, which requires a finding that the firms be part of a single-integrated

enterprise, which may be indicated where there is an interrelation of operations, common management, centralized control of labor relations, and common ownership or financial control. *Radio Union Local 1264 v. Broadcast Service*, 380 U.S. 255 (1965); *Wisconsin Education Assn*., 292 NLRB 702, 711 (1992). The Board has also noted that:

> In finding that a single-employer relationship exists, not one of these factors is controlling, and the presence of all four factors is not necessary. The single-employer relationship has also been characterized as an absence of an ''arm's length relationship found among unintegrated companies.'' *Operating Engineers Local 627 v. NLRB*, 518 F.2d 1040, 1045-1046 (D.C. Cir. 1975), affd. on this issue sub nom. *South Prairie Construction Co. v. Operating Engineers Local 267*, 425 U.S. 800 (1976). Ultimately, in finding that a single-employer relationship exists, all the circumstances present in each case must be considered. [*Iron Workers Local 15*, 306 NLRB 309, 310–311 (1992).]

The record before me shows clearly a functional integration evidenced by sharing common location, receptionist, sharing of production and maintenance employees, equipment and engineering personnel, sharing the parts, shipping, receiving, and purchasing department personnel and employees, sharing the accounting department employees and office clerical employees, and the service manager. The firms in short share employees and other resources in support of the business objective, including public relations resources. There is common management and control exercised over Davis and Merritt daily operations from top to bottom evidenced by the appointments made by Guthrie and credited employee testimony described above. The control of both firms' labor relations resides in and is regularly exercised by Guthrie, chief company spokesman, examples of which are described above and which are replete in the record. The direction of both firms is under a common-majority-ruled board of directors and the companies are owned to a significant extent by the family members and associates. As described in detail above, the companies' public relations efforts involve holding out to the public that the two firms operate as one and in communications simply addressed to ''all employees'' at the facility changes in various policies affecting employees are represented as being generated by ''the Company.'' The abundant proof that the two firms are manifestly not engaged in arm's-length dealing with one another is conclusively shown by the lack of any payments inter se the companies, Merritt occupying an unproven continuous ''debt'' position at Davis' expense all the while also enjoying free rent and unmonitored, unbilled services of Davis employees and Davis not billing Merritt enough for a profit to Davis for the latter's manufactured machinery orders. Based on all the circumstances I find that the two companies constitute a single employer. *Thornton Heating Service*, 294 NLRB 304 (1989); *Blumenfeld Theaters Circuit*, 240 NLRB 206 (1979), and cases cited above.

C. *The Appropriate Unit*

It has been noted before that a single employer finding does not dispose of a unit issue because,

> [A] determination that two affiliated firms constitute a single employer ''does not necessarily establish that an employer wide unit is appropriate, as the factors which are relevant in identifying the breadth of an employer's operation are not conclusively determinative of the scope of an appropriate unit.''

Thornton Heating Service., supra at 310, citing *South Prairie Construction Co. v. Operating Engineers Local 627*, 425 U.S. 800, 805 (1976). Respondent admits in its answer that the employees of Davis constitute separate appropriate production and maintenance, and engineering employee units as alleged in the complaint but contends that such fact does not impose legal responsibility for the complaint-alleged unlawful acts upon the companies derivatively inter se as the two constituted separate legal entities. Counsel accordingly filed no reply answer to the complaint allegation regarding appropriate unit on Merritt's behalf relying instead on its argument against a single employer finding alone as to such issue, which therefore needs to be addressed.

The complaint alleges that:

> All production and maintenance employees employed by Respondents at the Wallingford, Connecticut facility, excluding all office clerical employees, salesmen, professional employees, engineers, designers, draftsmen, plant manager, foremen and assistant foremen, guards and supervisors as defined in the Act,

and,

> All full-time and regular part-time drafters, drafter/designers and engineering clerks employed by Respondents at the Wallingford, Connecticut location, excluding all office clerical employees, and all professional employees, guards and supervisors as defined in the Act, and all other employees,

constitute separate units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act for the two groups, the production and maintenance employees, and the described engineering employee employed by the single employer.

The Board certified the Union as the collective-bargaining representative for the production and maintenance employees' unit on September 17, 1970, and certified the Union as such representative for the employees in the engineering unit described above on October 7, 1991, in a separate unit.

Respondent's employees are regularly used interchangeably to perform work common to their units for Davis or Merritt denoted purposes daily, to perform support functions in parts, shipping and receiving, and driving. Davis production and maintenance employees and engineering employees do the same work related to their job category for both companies in the same plant facility where all unit employees come into regular contact daily. Davis and Merritt engineering employees possess and exercise similar skills and work under direct or overlapping common daily immediate and overall supervisory and managerial control. There is a single common source of control over labor relations policy in Guthrie who sets employment benefits and working conditions for all Davis/Merritt employees. I find that the single employer's employees share in a close community of em-

ployment interests generally such that they can appropriately be combined in the existing established separate production-maintenance and engineering units applicable to them and that such resulting single employerwide units are appropriate units for collective bargaining within the meaning of Section 9(b) of the Act, as alleged in the complaint.

II. UNFAIR LABOR PRACTICES

The complaint in Case 34–CA–5495 marked as General Counsel's Exhibit 1c in the formal exhibit file and addressed in footnote 1 above, alleges that Respondent laid off Robert Augustine, Vincent Cassarino, Coleen Darmofalski, Robert Banker and William Kolendo, engineering unit employees, on November 30, 1991, without notice to the Union and without affording the Union an opportunity to bargain regarding such action thereby violating Section 8(a)(5) and (1) of the Act. The Board certified the Union as engineering unit employees' collective-bargaining representative on October 7, 1991, following an earlier Board-conducted election. Respondent therefore owed a duty to the Union to notify it beforehand concerning this action and to accord it an opportunity to bargain given the action's effect on the unit employees' terms and conditions of employment and the fact that such layoffs are mandatory subjects of bargaining. *Adair Standish Corp*., 292 NLRB 890 fn. 2 (1989), citing *Lapeer Foundry & Machine*, 289 NLRB 952 (1988).

Respondent admits it laid off the engineering unit employees, citing a lack of orders as the reason, but argues that the Union waived its right to bargain over the layoffs by failing to make a timely request to do so.

Respondent's engineering vice president, Tom Oravits, testified he informed employees on the Thursday or Friday before Thanksgiving which would be November 13 or 14, about the decision by Guthrie to lay them off effective November 20, 1991. He recalled that among the engineering employees present were two who were ''primary movers in the organizing movement,'' Robert Augustine and Vinnie Cassarino, members of the employees' negotiating committee. Augustine recalls that Oravits made the announcement in midafternoon on the Friday before Thanksgiving and that there were 3 working days left before the layoff. Employee Vincent Cassarino corroborates Augustine. Augustine tried, but was unable to reach Union Representative Jim Chieppo with the news until the following week. For his part, Chieppo testified, as is undenied, that he was not notified by Davis Electric at all concerning the decision or action taken to lay off employees. He recalled he learned of it for the first time on November 20, 1991, when Augustine told him he had been laid off. Contrary to Respondent's assertion on brief, neither Augustine or Chieppo testified that Chieppo learned about Respondent's decision on the day of its announcement to employees, as Augustine clearly testified he could not get through to Chieppo, who services 25 local unions, that day and under both Augustine's and Chieppo's accounts, it was not until the following week that he did learn—under Augustine's account on Monday, and under Chieppo's recollection on November 20. Asked whether he asked the Company to bargain about it, Augustine replied he believed it was a decision cast in stone already and that he didn't believe he had a choice to do so. Respondent reportedly returned the engineering unit employees to work on January 6, 1992, and I note the undenied account by engineering employee Vincent Cassarino that in the interim between the layoff and recall he observed on his return and memorialized in (G.C. Exh. 38) the substantial unit work performed by Respondent's Supervisor Dave Pepe, which included finishing some of Cassarino's work. I note further the admitted fact that Respondent's records in support of the decision to implement the layoff fail to support any lack of orders, and that they omit any mention of the orders then pending at Merritt, for which company the Davis engineering unit employees were commonly used. (R. Exh. 7.)

Respondent's argument that the Union waived its right to bargain over its action is unimpressive, whether Chieppo learned 1 or 2 days before the layoff, or on November 20 after its implementation. The fact is the Union, on either date, confronted an already made decision, a fait accompli, and was thus denied a reasonable opportunity to bargain. The fact that Respondent informed employees concerning its decision, which was to be implicated shortly afterward, and among them Augustine, a unit spokesperson, does not satisfy the duty to inform the Union itself. The wisdom behind this principle being illustrated by the fact that Augustine could not get to Chieppo with the information concerning a matter extremely vital to employees promptly, so that a chance to alleviate or change the course taken by Respondent through mutually beneficial negotiations on the subject was lost. Respondent owed a duty under law to communicate notice of the forthcoming layoff to the employees' statutory bargaining representative such that it would accord an opportunity for bargaining between the parties, not to merely announce a fait accompli to the employees themselves. This is an important concept based upon the belief that the parties may successfully address the employer's decision and either find a better course of action, adjust matters so that the impact on employees is lessened or the need for any action removed, or at least the deleterious effect on employees arising from the action be alienated by compromise of one sort or another so that collective bargaining is fostered and industrial relations stability made more secure. The importance in reaching such goal manifestly requires a notice by Respondent made to the Union in both an appropriate manner and at an appropriate time to accord the Union a reasonable opportunity to bargain. This requires more than that the Union learn about matters virtually via the grapevine. Respondent chose to reach its decision and communicate it to employees without communicating any notice to the Union, and presented it to employees as a fait accompli only shortly before the layoffs. The only way the Union learned about the action was because one of the employees told by Respondent's engineering vice president about the decision happened to be a unit spokesperson. Such circuitous secondhand word of mouth indirectly informing Chieppo about the layoffs does in no way rise to the status of the legal notice to which the employees' bargaining representative is entitled, for the important objectives behind the Respondent's duty to give notice to the Union are simply not well enough served by so haphazard and unreliable a means. The utility in notifying the Union directly clearly outweighs the slight burden on Respondent in attending to so simple a task. Furthermore, even when the Union did learn about the layoffs, whether it was 2 days before the action laying off the employees or the same day employees were laid off, Respondent confronted the Union with a fait accompli thereby denying the Union a reasonable opportunity

to bargain. I find in all the circumstances described that the Union did not clearly and unmistakably waive its right to bargain over the layoffs and that Respondent unilaterally laid off its engineering unit employees in violation of Section 8(a)(5) and (1) of the Act. *Ciba-Geigy Pharmaceuticals Division*, 264 NLRB 1013, 1017 (1982); *Holmes & Narver*, 309 NLRB 146 (1992), and cases cited above. I further conclude that, as a remedy for the unlawful layoffs, a make-whole order is required. *Flex Products*, 278 NLRB 417 (1986). At the hearing counsel for Respondent argued against imposing responsibility on Merritt for the layoff of the engineering unit employees, noting that when the Union filed its representation petition on August 19, 1991, it named only Davis and made no mention of Merritt. Respondent notified the Union by letter on February 22, 1991, that a new company was being formed to produce extruders, and by March 4, 1991, this was done. The Union asked for information concerning the new company prior to filing the representation petition but Respondent replied on March 19, 1991 it didn't believe the requested material was relevant. (G.C. Exh. 9.) Since Chieppo learned from the local union president that nothing further seemed to be happening regarding other employees coming to the plant to staff Merritt he considered its creation just another in a series of five ''new'' paper entities which came and went in the past and made no further response. He testified credibly and without denial that when the Union filed the representation petition for the engineering employees unit at Davis, there were no engineering drafting employees being employed there by Merritt. I find no merit in Respondent's position. The petition or stipulation for an election resulting therefrom ''should only be construed as limiting the Union's and employees rights in the representation case vis-a-vis. '' the Respondent, and does not preclude ''the enforcement of rights guaranteed to employees and the Union under the Act.'' *Robert G. Andrew, Inc*., 300 NLRB 444, 454 (1990). It is also clear here that by filing the petition, which names Davis Electric as employer, the Union was not agreeing that Davis was the only employer. Accordingly, the Union never waived its rights against Merritt and it is appropriate for responsibility to be placed on it as a single employer with Davis.

A. *Respondent's Threats and Warnings*

The complaint alleges that Respondent, acting through Guthrie, threatened employees in the P & M unit with unspecified reprisals because of the union representative's activities on behalf of the engineering unit, and because the Union filed unfair labor practices with the Board. It further alleges that Guthrie disparaged the effectiveness of union representatives and solicited employees in the P & M unit to replace their union representatives.

On August 27, 1992, while discussing a grievance with Respondent's vice president, Tom Oravits, the unit chairman for the production and maintenance unit, Walter Bergonzi, recalls that Guthrie intervened and, after telling him it was not open for discussion, left only to reappear shortly after nearing the stockroom. According to shipping and receiving clerk Pat Donato, both he and Oravits were located within hearing range. Bergonzi testified that Guthrie said, ''your buddy, which he meant buddy by Jim Chieppo, is costing the company around $20,000 in legal fees. And he says wait till next contract time and see what happens.'' Bergonzi said that Donato got into the discussion, asking Guthrie whether he was referring to the grievance Bergonzi had filed and Guthrie said, ''the whole thing.'' When Donato and Bergonzi asked what he meant, and whether he meant the engineering department, he answered yes. The two employees told Guthrie that they were separate from engineering and the grievance shouldn't cost $20,000. Whereupon Guthrie told them how he tried to get rid of Jim (Chieppo) to get a different person in to be representative, that Chieppo was basically ruining the business with all his charges he was filing. Guthrie told Bergonzi that he was the leader of the Union and that he could overrule Chieppo's decisions if he wanted to. At the time of the conversation the Union had filed charges with the Board. Bergonzi recalled that Guthrie had told him he was having a hard time with Chieppo a couple of times. Donato, shipping and receiving clerk for 19 years, corroborates Bergonzi's account also recalling that Guthrie said, ''these guys are costing me a ton of money'' and claiming that it was Chieppo's fault as he was filing charges. Donato asked Guthrie what he meant by charges, did he mean like when the engineering unit formed and Guthrie said yes its $20,000 and your contract is coming up and the money has got to come from somewhere.

Respondent did not question Oravits to deny the reported remarks by Guthrie, which left the employees' credible accounts intact. Guthrie was unable to recall details, but admitted the gist in the comments about the cost incurred because of the charges and his preference for a different representative than Chieppo attributed to him. He failed to deny the employees' versions simply saying he didn't believe he expressed the opinion he'd rather have a different union representative than Chieppo to deal with. He was begrudging, guarded, and engaged in hair splitting fencing under examination finally admitting he did harbor concern over the charge filing over the engineering unit, and admitting only after prolonged cross-examination that he told employees that with all the charges Chieppo was filing the money had to come from somewhere. He couldn't recall his actual words. In fact, so professedly poor was Chieppo's power of recall and memory of his very own actions that he astonishingly could not even recall whether or not he had ever sent a letter to Bill Foley, director of the Steelworkers Union, to ask to have Jim Chieppo removed as representative of his employees or if it was even possible he had done so, adding to the highly suspicious nature of such testimony the following, ''I don't recall. I would just like to add a clarification; that if such a letter was ever written, it would only be written by Counsel and not by me.'' To the followup question, he responded,

> Q. Well did you have your Counsel write a letter to Bill Foley. . . .
>
> A. Not to my knowledge.''

Guthrie displayed an encyclopedia-like wealth of knowledge in a wide range of subjects concerning the operations of a complex business enterprise, including day-to-day details concerning specific matters. So it is only natural to expect that so intelligent a witness would have little problem with the question before him had he chosen to be forthcoming. Accordingly, I find his replies to counsel and the court a grievous lack of candor and do not rely on his only limited

denials—which barely even amount to such, of portions in the employees' testimony, which is therefore altogether credited.

By his remarks to employees I find that Respondent threatened employees with economic punishment and other unspecified reprisals unless they relinquished their rights to seek redress through legitimate legal proceedings for alleged unlawful conduct against them based upon their union and the concerted activities including the filing of charges under the National Labor Relations Act; that Respondent further disparaged the effectiveness of employees' union representative, Jim Chieppo, and unlawfully solicited employees to overrule and replace their union representative, James Chieppo in violation of Section 8(a)(1) of the Act. *Bakers of Paris*, 288 NLRB 991, 1008 (1988); and *Cooper-Jarrett, Inc*., 260 NLRB 1123–1124 (1982).

B. *Respondent Discharges Robert Augustine*

Augustine began work for Respondent as a design draftsman in the Davis engineering department on November 20, 1984, and his last day of work was June 9, 1992.

He initiated and was primarily responsible for the Union's campaign to organize the engineering department employees, later becoming union chairperson. He got employees together, meeting them at his home, and called a union representative to set up a meeting where he and other engineering employees signed union authorization cards around July 1, 1991. He also took part in negotiations opposite Guthrie for a contract on behalf of engineering employees after the Union was certified during such negotiations on March 3 and 12, and in late March 1992, as well as for a fourth time later in July. During 1991 and 1992, Augustine complained to Respondent's management via Supervisor David Pepe on a number of occasions over Respondent's supervisors doing engineering drafting work while nonsupervisory draftsmen were on layoff; in addition he was outspoken in his criticism of the Company with other unit employees during the workday.

Respondent assuredly knew about Augustine's involvement in union activities given their prominent nature and the small compact plant and Guthrie admitting on the stand his concern that unit chairperson Augustine had spoken ill of management and the Company to other employees. Moreover, the two participated in contract negotiations on opposite sides.

Guthrie manifested animus towards the engineering unit in which Augustine was employed since its establishment principally due to Augustine's efforts, charging that, as described by employee Pat Donato without denial, ''those guys are costing me a ton of money'' and, according to Walter Bergonzi, also undenied, threatening ''wait until next contract time and see what happens.'' It is remembered that it was Guthrie who suddenly and without warning notice to the Union unlawfully laid off the entire engineering employees' unit barely 6 weeks after the Board certified the Union as bargaining representative for the unit, Augustine testifying it was the first time he had ever been laid off by the Company. Chieppo requested Guthrie include the engineering employees for negotiating purposes with the production and maintenance employees to no avail and the parties had not yet reached any agreement concerning them by the time of the hearing.

Upon their return to work January 6, 1992, Augustine learned that Pepe had performed bargaining unit work from Cassarino's memorandum, described above, and further quickly became aware that management had suddenly, as admitted by Oravits, become more demanding about time spent on the job, pushing the employees hard and that though denied by Oravits the department was being observed very closely by Pepe and Oravits. Augustine and Cassarino sat at desks near one another. In February, also following the engineering employees return, Guthrie and Oravits ordered Augustine's desk moved to a point directly opposite the doorway into Oravits' office supposedly due to three complaints by an engineering employee about alleged abusive language in Augustine's discussions with Cassarino about the Company. Supposedly in an effort to shield the complaining employee from such talk, Respondent moved Augustine. It developed upon further examination at trial however that the move resulted in Augustine being located closer to the offended employee than before. Oravits then admitted he knew about Augustine's union activities and had not moved him so as to put distance between Augustine and the complaining employee but rather, as he testified, ''the intent was to move him away from Vinnie [Cassarino] so that he had no one to speak with.'' Oravits never spoke to Augustine to resolve the situation, or to get his version of the events, never heard the alleged talk himself, did not ask Pepe to talk to Augustine, admitted the allegations could have been totally false, and that he was aware the complaining employee had filed an RD petition, and never explained the reason for the move to Augustine. Respondent never reprimanded Augustine for not working or for talking. After the move admittedly designed to deprive the prounion Augustine of any one to speak with, Oravits said, the ''problem'' stopped.

Respondent laid Augustine off again at noon on April 14, in midday only to have David Pepe call him on April 28 or 29 to return to work Monday, May 4. Around 10 a.m. that day after Augustine reported to work, Pepe told Augustine the order had been put on hold and there was no work for him. To Augustine's understandable distress, Pepe informed him he, Pepe, and the Company had known on Friday that the order was delayed, yet no one had called him, that he had been home all day and no one had tried to reach him. He testified it was most unusual to be recalled and laid off on the same day and he was shocked by the treatment. But there was more ill treatment to come. Respondent recalled Augustine on May 11 only to lay him off again on June 9, though Augustine was the only mechanical draftsman left and even though, in addition, Augustine, who informed Pepe of this, had not yet finished his project, there being 4 or 5 days work left which Augustine informed Pepe. At trial, Augustine spelled out in detail what the unfinished work entailed and that Pepe told him someone else would do it and that Augustine had to be out of there that day. Pepe did not take the stand.

Augustine testified he next heard from Respondent by a message on his answering machine on August 8 from Oravits about having something for him to do. Between the time of Respondent's latest layoff of him and the message, Augustine had taken work at Hall Industries, and did not immediately return the call, or reply to a later letter from Oravits about returning to work on August 17 (G.C. Exh. 47), uncertain as whether he would return to Respondent's employment

or continue at Hall's and upset over his treatment. Guthrie called Augustine on August 11 asking that he resign from his job. Augustine refused to resign pointing out that he had been laid off. Guthrie then asked about the possibility of his returning on August 17 and Augustine, wanting to conclude the call because a Hall supervisor was standing nearby told him he didn't think so. He then told Guthrie he'd call Pepe about coming by to clean out his things. That afternoon, Augustine talked with Pepe after collecting his things, asking about the task he'd been called back for because he had been concerned over it being just another short job and he would have been out the door again. He told Pepe he had a family to worry about, financial responsibilities and couldn't afford to be bounced back and forth like a yo-yo on a psychological roller coaster the company was putting him through, that he needed a steady job and couldn't deal with the ''bull-shit.'' Rather than offering plausible reasons for Respondent's conduct towards Augustine, Pepe agreed, with Augustine saying it was a lousy way to live, adding he had no control over the situation. The very same day Respondent tried to deliver a letter to Augustine, later mailed to him, in which Respondent, over Oravits' signature informed him,

> I understand that you will not return to work at Davis Electric and plan to continue working at Hall Industries. Therefore this letter will confirm your discussion with Sandy Guthrie and we will treat this as a voluntary resignation effective today. (G.C. Exh. 45.)

Respondent's own exhibits indicate that it considered Augustine's work satisfactory or better in most respects, and its appraisal of him by Pepe stated:

> Does complete and well-documented work. Machines go together well. Good drafting skills. [R. Exh. 1.]

Respondent engaged in numerous acts against Augustine which foreseeably created intolerable working conditions and forced him to quit. The Company unlawfully laid him off with other engineering unit employees on November 20, Guthrie accusing the engineering unit organized by Augustine of costing him a ton of money due to charge filing and threatening Augustine's fellow production employees unlawfully due to the engineering unit actions. Respondent admittedly subjected Augustine to greater pressure to work harder and heightened surveillance on his return from the November 20 layoff and moved his usual work location to a point directly in front of Vice President Oravits' office as admitted by the latter to prevent his speaking with any employee—an activity which Guthrie also admitted concerned him, thereby muzzling Augustine without justification and in highly suspicious circumstances, subjected Augustine to a steady succession of short-term layoffs and recalls callously failing to notify him not to return for the May 4 work which Respondent knew was ''delayed'' well beforehand, showed contempt for Augustine's repeated protests because Respondent had supervisors do bargaining unit work while engineering unit employees were on layoff, laid Augustine off in mid-stream of his work project insisting he depart the premises at once without explanation, and prodded him to resign. Augustine protested to Pepe finally that he had a family to worry about and financial responsibilities so that he could not afford to be bounced back and forth ''like a yo-yo on a psychological roller coaster the company was putting me through; that I needed a steady job and couldn't deal with the bull-shit.'' Pepe's only answer was that he agreed that it was a lousy way to live but that he had no control over the situation. He offered no explanations and made no effort to make Respondent's conduct against Augustine plausible.

Given Augustine's prounion activities, Respondent's knowledge thereof, its demonstrated antiunion animus and the lack of any justification for its sustained ill-treatment of Augustine, whose abilities as an employee were satisfactory if not better, I find that General Counsel has established a prima facie case that the employee's prounion activity was a motivating factor in Respondent's actions against Augustine, which forced him to quit. *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). The burden then falls on Respondent to prove it would have acted against Augustine as to whose work it had no complaint in a manner forcing him to quit, and thereby constructively discharging him, even apart from his prounion activity. This it failed to do arguing only that the employee had voluntarily quit. Accordingly, I find that by the conduct cited above, including inter alia starving Augustine out of work by deliberately failing to provide him with work because of his known prounion activities and sympathies, Respondent constructively discharged him in violation of Section 8(a)(3) and (1) of the Act. *Central Machine & Tool Co.*, 172 NLRB 1593, 1600 (1968) (discharge of Clinton Alexander); *Akron Novelty Mfg. Co.*, 224 NLRB 998, 999 (1976) (discharge of Rebecca Graham).

C. *Respondent Discriminates Against the Engineering Unit*

The complaint alleges that Respondent removed certain work from the engineering unit since about February 1, 1992, and further, since June 1, 1992, removed work from certain employees in said unit and reassigned it to newly hired employees because unit employees engaged in protected concerted and union activities, thereby violating Section 8(a)(1) and (3) of the Act. Respondent, it is further alleged, took this action without affording the Union prior notice or an opportunity to bargain concerning the action thereby also violating Section 8(a)(1) and (5) of the Act.

The record shows that Respondent did remove engineering bargaining unit work as alleged. Beginning on February 1, 1992, Nicholas Nicostro submitted numerous bills covering engineering unit work he performed on the outside for Respondent—billing Merritt and approved by Oravits. The relevant bills covered February–23 hours; March–7 hours; April 11–4 hours, April 12–4 hours, April 17–5 hours, June 9–45 hours, June 21 (for work done between June 13 and 14)–11 hours, June 28–9 hours, July 5–11.5 hours, August 30–9 hours, September 13–19 hours, September 20–12 hours, and September 27–5.5 hours. (G.C. Exhs. 41n–41aa.)

Beginning June 23, P. Merola billed Respondent as well, for engineering unit type drafting duties he performed outside, June 23 for 29 hours, July 11 for 43 hours, July 27 for 11.5 hours, August 19 for 31.6 hours ($15-per-hour rate $457), August 31 for 10 hours ($15-per-hour rate $150), September 8 for 27 hours ($15-per-hour rate $405), and September 14 for 5 hours. (G.C. Exhs. 42a–g.)

Oravits testified that Respondent began hiring individuals to perform drafting work at the facility in the summer of

1992 for Merritt, George Angelescu and Alex Purcell, both of whom worked downstairs and used Davis drafting equipment. He stated he had used Purcell for drafting offsite earlier in May or June 1991 and that the two billed Respondent on an hourly basis. Oravits is responsible for the work done by Angelescu and Purcell since he began working at the facility. The record contains bills by Angelescu for engineering unit type work as follows: July 20–$800, July 27–$1025, August 3, $1050, August 10–$1075 and August 17–$1050. (G.C. Exhs. 43a–e.) Alex Purcell, two quotes by him on May 28, 1991, 29 hours, and June 3, 1991, 10 hours, for which Purcell billed Respondent in June 12, 1991, $1365, and from June 2, 1992 on several other dates in June through December 1992 and January though April 1993, on which Purcell billed Respondent a total of $38,529. The amount Respondent paid to Merola for his drafting work was $2,356.50, that paid to Angelescu, $5000, and that paid to Nicostro, $2475 or a total of $48,360.50. This record thereby evidences that Respondent both removed a substantial amount of income generating work from the engineering unit since February 1, 1992, given the bills of the individuals, and assigned such work to newly hired employees in said unit, Purcell and Angelescu, neither of whom was shown to be an independent contractor under Board law. *Capital Parcel Delivery Co.*, 256 NLRB 302, 302–303 (1981).

Respondent's ire due to the engineering unit employees activities led it to ignore the Union in its unlawful unilateral layoff of the engineering unit employees described above, as well as to engage in a parade of misconduct against its employees catalogued above, including threats and the discharge of engineering unit employee Augustine. The time span during which it has been demonstrated that Respondent removed and reassigned work done by engineering unit employees to others is coextensive with many of the layoff periods of employees Augustine and Cassarino, April, May, June, July, and August 1992 even though work was available as established by the record. Given the activities by the engineering unit employees, admittedly known and highly resented by Guthrie, who threatened employees and unlawfully sought the removal of the Union's representative Chieppo, and further due to the fact that Respondent has failed to prove by probative evidence the existence of a valid reason why the work was removed from the engineering unit employees and reassigned to newly employed employees—Oravits simply engaging in a generalization that they were not fast enough—and the record showing the unit employees were qualified to perform the work, I conclude that General Counsel has established a prima facie case that the employees protected concerted and union activities were motivating factors behind Respondent's removal and reassignment of work. Respondent therefore assumed the burden of proving that it would have removed and reassigned the work of its engineering unit employees even aside from their described activities. Respondent was unable to do so and I therefore conclude that the complaint allegations in these respects are supported and that Respondent thereby violated Section 8(a)(1) and (3) of the Act by both discriminatorily removing and reassigning engineering unit work during the cited periods. The record clearly supports the conclusion that unit employees were on layoff during the regularly repeated work removals and reassignments and that such actions involved work normally assigned to them or for which they were qualified to perform and that it was bargaining unit work. Respondent failed to establish that its action had no injury to unit employees. The exact identification of employee losses is best reserved for the compliance stage in these proceedings given the staggered timing of the layoffs and the lack of present information in the record by which the losses can be traced to specific individual employees. But I note in this connection that employee Cassarino in a letter of resignation dated May 7, 1992, addresses Respondent's recall notice for him to work and his refusal to do so as being based upon the fact that there was no work for him to perform anyway, as evidenced by Respondent sending Augustine home due to lack of work that day, May 4, 1992. (G.C. Exh. 40.) Respondent did not deny that on this occasion, as well as the other layoffs noted above, there would have been sufficient work for the engineering unit employees but for the work removed and reassigned either outside or to newly hired employees, for which it failed to prove any objective justification. Also germane is the undenied testimony by Augustine that when he was sent home on June 9, 1992, there was work remaining on the project to which he was assigned yet Respondent offered no explanation for its action. These failures to explain, deny, or offer any persuasive reasons further confirm the pretextual nature of the assigned, reasons and justify making the inference that the actions are discriminatorily motivated.

Respondent admittedly failed and refused to provide the Union with notice concerning the work removals or the work reassignments, which directly concern employment conditions and are therefore mandatory subjects of bargaining; instead it argued only that Davis and Merritt were separate entities and therefore Merritt could do as it pleased in such matters as it had no bargaining obligations towards the Union. This contention lacks merit given the finding herein that at all relevant times since its inception Merritt constituted a single employer with Davis in an engineering unit comprising employees of both. The fact that Respondent gave Purcell the engineering work before the Union became the bargaining representative did not privilege the Respondent afterward to continue doing so without according the Union notice and opportunity to bargain. *Adair Standish Corp.*, supra at fn. 1. Respondent does not even attempt to show that in any portions of the described conduct, for instance, its dealings with Purcell at times before taking Purcell in-plant or Merola, that it was engaging in any legitimate solely entrepreneurial decision, was abandoning a line of business, or ceasing a contractual relationship or making any other change that significantly altered the scope and direction of its business by, even if it could be called such, subcontracting engineering work to them, such that the decision and action fell outside the bargaining obligation. See *Holmes & Narver*, 309 NLRB 142, supra. Further, my finding that Respondent's actions including that involving Purcell and Merola were taken for unlawful discriminatory reasons, ''precludes any argument that the decision was exempt from the bargaining obligations as legitimate entrepreneurial decision.'' *Equitable Resources Energy Co.*, 307 NLRB 730 (1992). Accordingly, I find that by its action Respondent unilaterally removed and reassigned engineering unit work thereby violating Section 8(a)(1) and (5) of the Act.

D. *Respondent Unilaterally Subcontracts Production and Maintenance Work*

General Counsel alleges that Respondent subcontracted production and maintenance work since about June 1, 1992, without prior notice to the Union affording the Union an opportunity to bargain.

Respondent admits that it subcontracted the assembly of four extruders to Tucker Machine Co., three electrical control panels which it subcontracted to Machinery Electrics, and the work required in hook-up to the extruders to an unidentified subcontractor of Merritt to be done at Tucker's plant, Oravits and Guthrie placing the dates around May or June 1992, and the bills for the work being dated in June as well. (R. Exhs. 2, 3, 4c, and 5.) Guthrie testified the major reason for doing so was to see if the costs of Davis' production were competitive with Respondent's competition, that the extruder work could have been performed by Davis in-house, and admitted that Respondent did not notify the Union about the subcontracting of either the panels or the extruders in advance. Operations Vice President Oravits testified that Davis had been making extruders at the Davis facility and the electrical control panels that go along with them since May 1991 and the parties stipulated that Davis had been making extruders prior to this, albeit a different type. Guthrie admitted Respondent's own advertising literature holds out Davis as a manufacturer of the machinery whose production was subcontracted out. (G.C. Exh. 33.)

The record further shows that the subcontracted work would entail several hundreds of man-hours work for the production and maintenance unit employees had the work been performed in-house. Even more critically there were numerous unit employees on layoff for substantial periods of time coextensive with the performance of the work by the outside contractors, a fact bearing particular further significance as noted below. (G.C. Exh. 36.)

E. *Analysis*

I first find that Respondent's conduct is not exempt from bargaining under established authority as ''involving a change in the scope and direction of the enterprise . . . akin to the decision whether to be in business at all.'' *First National Maintenance Corp. v. NLRB*, 452 U.S. 666 (1981). Thus, based principally on cost considerations Respondent decided to subcontract the extruder work in question and did not abandon a line of business or cease a contractual obligation or make any fundamental changes described above. The action clearly amounted to a removal of unit work and therefore was a mandatory subject of bargaining. *Holmes & Narver*, supra, and *Storer Cable TV of Texas*, 295 NLRB 295, 296 (1989). Respondent's defense that Merritt had no duty to bargain with the Union because Merritt is a separate entity has no merit given the finding herein that Merritt and Davis constitute a single employer and that a single employerwide unit structure consisting of production/maintenance and engineering units is appropriate. Merritt is thereby bound by the Union/Davis contract restraints. *Thornton Heating Service*, supra at 310. Respondent's defense that even if it constituted a single employer it was privileged to subcontract the work because it did so under the parties' contract's allowance of such conduct in accordance with past practice unless production/maintenance employees are on layoff as to which there was no proof, is doubly faulty for such was simply not past practice and there were employees on layoff as described above during the time of the subcontracting.

The contract grants the company management rights to ''include the right to subcontract work in accordance with past practice.'' (G.C. Exh. 2, p. 4.) Initially, I note that this is no carte blanche license for any and all subcontracting but only such action arguably when in accordance with past practice.

Union President Walter Bergonzi testified with the assurance borne from his own long experience and that related to him by past local union presidents concerning the parties' past practice. The spontaneity and straightforwardness in his account combined with openness in his demeanor commended the testimony as reliable.

He testified the Company has the right to do some subcontracting out, but only in some instances which he carefully listed as being when a special piece can't be made in-house, a rush job where to not subcontract it would hold up the line by addressing the rush job; that he would agree to a subcontract of a rush job also when the unit was busy; even working overtime and the time involved was small, maybe a day's worth of work but even then, if employees were on layoff he'd not agree but rather insist on employees being called back. Bergonzi, consistent with this, complained to Guthrie in 1989 when another company known as AFTEC was doing Davis work and, without referring to any right to have AFTEC do it because employees were not on layoff, Guthrie instructed by memo to AFTEC personnel that the work involved was to be performed by Davis personnel only. (G.C. Exh. 49.)

Even more revealing, on April 8, 1992, when a panel was needed quickly and all the unit electricians were busy, the Company asked Bergonzi not to file a grievance over the panel work being subcontracted. The Union insisted that when it agreed to this, that the parties specify it was a ''one-shot'' deal, and that it couldn't be used as a precedent, and the Company agreed. (G.C. Exh. 50.) No mention was made by the Company that it was entitled to do this in accord with past practice as employees were not on layoff, all electricians being busy, yet it asked the Union to agree to the action and not to file a grievance—a request that would not be necessary if it believed, as asserted on brief, that it had the unimpaired right to subcontract in any case so long as employees were not on layoff. Respondent's effort to show such a past practice merely because the Union had grieved when Respondent subcontracted work during layoffs and won them, is in no way determinative that Respondent could subcontract unit work at any other time, and the Union is not shown to have ever agreed to such an important concession. Pat Donato worked for Respondent 19 years and testified as a past union president, vice president, shop steward, and was chair of the negotiating committee during contracts. He testified in corroboration of Bergonzi's account; namely, that if the plant force was working full time, when the Company asked to subcontract, or at overtime, and it was a large frame or not buildable in the shop, the Union would agree to the work being contracted out. He recalled that the Union filed a grievance, answered by Respondent over subcontracting parts that normally are made in the plant, plus the fact there were employees laid off at the time. (G.C. Exh. 48.) While

being cross-examined by Respondent's counsel, who asked whether it wasn't true that past practice was the Company does not contract out work which can be done in-house while people are on layoff and he answered no, the past practice and layoff are two different things. When asked why he would reference layoff when writing the grievance, Donato said, you put down the facts of the grievance. Donato testified the Union never notified the Company it was all right to subcontract work of any kind so long as all the men were working; and in fact communicated to Respondent in connection with a 1988 grievance that ''[being laid off] had nothing really to do with the subcontracting.'' Union Staff Representative and District Director Chieppo testified it was the Union's view that the settlement of the grievance (G.C. Exh. 3) was not based upon the fact that unit employees were on a reduced workweek, or on layoff but rather that it was unit work which unit employees were entitled to perform whether on layoff or not—a view far more in accord with lifelikeness than the view Respondent could always subcontract if employees were merely ''working'' at the time.

I find the evidence on this defense of Respondent insufficient to support any unconditional contract right rooted in past practice enabling Respondent to subcontract this work without notice to the Union affording it an opportunity to bargain, and further that even under its discredited theory employees were on layoff during the subcontracting. Accordingly, I find Respondent unilaterally subcontracted bargaining unit work thereby violating Section 8(a)(5) and (1) of the Act.

F. *The Union's Request for Information*

On August 25 and 26, 1992, the Union sent Respondent letters requesting information concerning Merritt's employees' pay, benefits, and other working conditions; the second letter sought information concerning the contracting out of extruders by Merritt described above. (G.C. Exhs. 15, 11.) Guthrie denied both requests. (G.C. Exhs. 16, 12.) The Union sought the information described in the first letter as part of its request to enter into negotiations and in the second letter to prepare for Bergonzi's grievance concerning the subcontracting of extruders. Guthrie based his denials of the Union's request on Respondent's contention that Davis and Merritt were separate companies so that Merritt had no bargaining obligation running to Merritt employees or its subcontracting decisions.

G. *Analysis*

As has been noted:

> It is well settled that an employer has a statutory obligation to provide, on request, relevant information the union needs for the proper performance of its duties as a collective-bargaining representative. *NLRB v. Truitt Mfg., Co*., 351 U.S. 149, 152 (1956); *NLRB v. Acme Industrial Co*., 385 U.S. 432, 435-436 (1967); *Detroit Edison Co. v. NLRB*, 440 U.S. 301 (1979).
>
> Where the union's request is for information pertaining to employees in the bargaining unit which goes to the core of the employer-employee relationship, that information is presumptively relevant. However, where a union has requested information with respect to matters occurring outside the bargaining unit, the burden is on the union to demonstrate that the information is relevant. *Pfizer, Inc*., 268 NLRB 916 (1984), enfd. 736 F.2d 887 (7th Cir. 1985); *Ohio Power Co*., 216 NLRB 987 (1975), enfd. mem. 531 F.2d 1381 (6th Cir. 1976). In either situation, the standard for relevancy is the same: ''a liberal discovery-type standard.'' *Acme Industrial*, 385 U.S. at 437.
>
> The Board has held that where, as here, the requested information concerns the existence of an alter ego operation, it is not presumptively relevant and the Union has the burden of establishing its relevancy. *Proctor Mechanical Corp*., 279 NLRB 201 (1986); *Pence Construction Co*., 281 NLRB 322 (1986). To satisfy this burden, the Union ''must show that it had a reasonable belief that enough facts existed to give rise to a reasonable belief that the two companies were in legal contemplation a single employer.'' *Walter N. Yoder & Sons, Inc. v. NLRB*, 754 F.2d 531, 536 (4th Cir. 1985), enfg. 270 NLRB 652 (1984). *Knappton Maritime Corporation*, 292 NLRB 236–239.

The facts recited above in the body of this decision to support the finding that Davis and Merritt constituted a single employer include many matters openly broadcasted and of common knowledge to employees, local union officers, and the Union, and are not denied by Respondent. Such information alone supports the conclusion that the Union ''had a reasonable belief that enough facts existed to give rise to a reasonable belief that the two companies were in legal contemplation a single employer.'' Thus the facts known to the Union concerning interrelation of operations, common control of labor relations, common location, common immediate supervision, and management interchange; and the fact that Respondent held itself out to the public in its advertising virtually as one company with the same address and phone number and receptionist, as well as holding itself out to employees as one company in its communications with them, establish beyond dispute such reasonable belief. The information sought is clearly the type which goes to the core of the employer-employee relationship, the information covering employment conditions of Merritt employees and its admitted subcontracting of extruders—the latter needed to enable the Union to pursue a grievance over same. Such information, I find, is relevant and necessary to the Union's proper performance of its duties as a collective-bargaining representative. I therefore conclude that Respondent's refusal to furnish such information violated Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

1. Davis Electric Wallingford Corporation and Merritt Extruder Corporation (Respondent) constitute a single employer within the meaning of the Act.

2. The following employees of Respondent constitute separate appropriate units for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All production and maintenance employees employed by Respondent at its Wallingford, Connecticut facility, excluding all office clerical employees, salesmen, professional employees, engineers, designers, draftsmen, plant managers, foremen and assistant foremen, guards and supervisors as defined in the Act.

All full-time and regular part-time drafters, drafter/designers and engineering clerks employed by Respondent at the Wallingford, Connecticut location, excluding all office clerical employees, and all professional employees, guards and supervisors as defined in the Act, and all other employees.

3. At all times material herein, the Union has been and continues to be the long-established certified and recognized exclusive collective-bargaining representative for employees in the production and maintenance unit, and, since October 7, 1991, has been and continues to be the certified exclusive collective-bargaining representative for employees in the engineering unit based on Section 9(a) of the Act.

4. By threatening employees with unspecified reprisals because of the Union's representative activities on behalf of employees, and because the Union filed unfair labor practice charges with the Board; by disparaging the effectiveness of union representatives; and by soliciting employees to replace their union representatives, Respondent violated Sections 8(a)(1) and 2(6) and (7) of the Act.

5. By unilaterally laying off engineering unit employees Robert Augustine, Vincent Cassarino, Coleen Darmofalski, Robert Banker, and William Kolendo on November 20, 1991, Respondent violated Section 8(a)(1) and (5) of the Act.

6. By removing work from the engineering unit since February 1, 1992; and, by removing work from certain engineering unit employees since June 1, 1992, and reassigning it to other newly hired employees in the engineering unit because of employees protected concerted and union activities in order to discourage said activities, and without according the Union notice or an opportunity to bargain concerning its actions, Respondent violated Section 8(a)(1), (3), and (5) of the Act.

7. By discharging engineering unit employee Robert Augustine on August 11, 1992, because of his protected concerted and union activities, Respondent violated Section 8(a)(1) and (3) of the Act.

8. By subcontracting work previously performed by employees in the production and maintenance unit since June 1992, without according the Union notice or an opportunity to bargain concerning its action. Respondent violated Section 8(a)(1) and (5) of the Act.

9. By refusing the Union's letter requests dated August 25 and 26, 1992, for information necessary and relevant to the Union's representative duties towards unit employees, Respondent violated Section 8(a)(1) and (5) of the Act.

10. The aforesaid violations of the Act are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Respondent has violated the Act inter alia: (1) by discriminatorily discharging Robert Augustine on August 11, 1992, (2) by laying off the engineering employees identified above on November 20, 1991, without notice to the Union or bargaining, (3) by unilaterally and discriminatorily removing and reassigning engineering unit work without notice to the Union or bargaining, and (4) by unilaterally subcontracting production and maintenance work without bargaining.

1. Respondent must offer Augustine reinstatement and make him whole for any loss of earnings and other benefits he suffered, computed on a quarterly basis from the date of his discharge to the date of a proper offer of reinstatement less any net earnings as prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

2. Respondent must offer reinstatement and backpay computed in a similar manner to the engineering unit employees it unlawfully laid off on November 20, 1991, identified above in the conclusion of law section of this decision, such make-whole remedy being warranted. *Adair Standish Corp*., 292 NLRB 890 (1989), and cases cited therein.

3. Respondent must also cease removing and reassigning engineering unit work without prior notice to the Union and upon request bargaining thereto or for unlawfully discriminatory reasons under the Act; rescind such actions by it which occurred beginning February 1, 1992, and June 1, 1992, to the present, restore the status quo ante of engineering unit work assignments to that in existence prior to February and June 1992 the respective periods identified herein, and make whole all employees for any losses which they may have incurred as a result of the discrimination against them, such losses with interest, to be computed in the manner described hereinabove in subparagraph 1.

4. Respondent must cease subcontracting extruders, panels, and other work previously performed by its production and maintenance unit employees without notice and, on request, bargaining with the Union, restore to said employees such work subcontracted since June 1992, and make whole employees for all losses incurred by them as a result of such unlawful action against them from June 1992 to the present with interest as computed in the manner described above. It does not appear from the record, or does Respondent contend that such restoration to the status quo ante remedy would threaten Respondent's continued viability or be unduly burdensome. *Mountaineer Petroleum*, 301 NLRB 801, 802 (1990).

Respondent has further violated the Act by unlawfully refusing to furnish the Union with certain information, and by threatening employees because they engaged in protected concerted and union activities so that Respondent must be ordered to take affirmative action designed to effectuate the policies of the Act.

On the findings of fact and conclusions of law and on the entire record I issue the following recommended[2]

ORDER

The Respondent, Davis Electric Wallingford Corporation, Merritt Extruder Corporation, of Wallingford, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with unspecified reprisals because of the Union's representative activities on behalf of the employees, and because the Union filed unfair labor practice charges with the Board.

[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Disparaging the effectiveness of union representatives and soliciting employees to replace their union representatives.

(c) Threatening employees with economic punishment because unfair labor practice charges are filed with the Board.

(d) Forcing Robert Augustine, or any employee, to quit employment with Respondent by subjecting the employee to intolerable working conditions thereby constructively discharging the employee because of the employee's protected concerted and union activity.

(e) Laying off the engineering unit employees without according the Union prior notice and, on request, bargaining with the Union over the subject.

(f) Removing and reassigning engineering unit work from employees due to their protected concerted and union activities or without according prior notice and, on request, bargaining with the Union regarding such changes in work and assignments.

(g) Subcontracting the work required in the manufacture of extruders and panels previously performed by employees in the production and maintenance unit outside the bargaining unit without prior notice to the Union and, on request, by the Union bargaining over the subject.

(h) Failing and refusing to furnish the Union with information relevant to the Union's representational duties towards unit employees as set forth in the Union's August 25 and 26, 1992 letters requesting such information.

(i) In any other manner restraining or coercing employees in the exercise of their rights as guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Robert Augustine discharged on August 11, 1992, both individually and as a member in the engineering unit discriminated against together with Vincent Cassarino, Coleen Darmofalski, Robert Banker, and William Kolendo, immediate and full reinstatement to their jobs or, if such jobs no longer exist, to a substantially equivalent position without prejudice to their seniority or any other rights and privileges previously enjoyed and make them whole for any loss of earnings and any other benefits suffered as a result of the discrimination against them including losses arising from Respondent's unlawful unilateral actions affecting them on November 20, 1991, and since February 1, and June 1, 1992, and in the matter of Robert Augustine from those dates as well as from August 11, 1992, the date he was discharged, in the manner set forth in the remedy section of this decision.

(b) Rescind the unlawful work removal and reassignment decisions affecting engineering unit employees and restore the status quo ante to that existing prior to February 1992 regarding work removal, and June 1992 regarding work reassignments.

(c) Rescind the decision to subcontract extruders and panels manufacture and assembly work previously performed by production and maintenance unit employees and restore such work to unit employees.

(d) Make whole the production and maintenance employees for any loss in wages or other benefits they incurred as a result of the unilateral subcontracting of their bargaining unit work in the manner set forth in the remedy section in this decision.

(e) Notify United Steelworkers of America, AFL–CIO as legally required of decisions to change the wages, hours, terms, and employment conditions of bargaining unit employees, including by work removal, reassignment of work, layoff, discharge, and subcontracting or other means, and afford it, on request, adequate opportunity to bargain concerning such decisions and their effect on bargaining unit employees in the described units:

> All production and maintenance employees employed by Respondent at its Wallingford, Connecticut facility, excluding all office clerical employees, salesmen, professional employees, engineers, designers, draftsmen, plant managers, foremen and assistant foremen, guards and supervisors as defined in the Act.
>
> All full-time and regular part-time drafters, drafter/designers and engineering clerks employed by Respondent at the Wallingford, Connecticut location, excluding all office clerical employees, and all professional employees, guards and supervisors as defined in the Act, and all other employees.

(f) Provide the Union with the written information requested by it on August 25 and 26, 1992.

(g) Preserve and, on request make available to the Board or its agents for examination and copying all payroll records, social security payment records, timecards, personnel records and reports and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(h) Post at its Wallingford, Connecticut place of business copies of the attached notice marked ''Appendix.''[3] Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(i) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten employees with unspecified action against them because of their support for the United Steelworkers of America, AFL–CIO.

WE WILL NOT threaten employees with economic penalties because unfair labor practice charges are filed with the National Labor Relations Board on their behalf.

WE WILL NOT belittle or disparage our employees' union representatives and ask employees to replace them.

WE WILL NOT discriminate against our employees because of their activities on behalf of the United Steelworkers of America, AFL–CIO or any other labor organization by discharging any employee, laying them off, removing their work, reassigning their work, or by any other adverse action with respect to their wages, hours of employment, or other terms and conditions of employment.

WE WILL NOT subcontract, remove, or reassign any work previously performed by our employees in the units described below, or make any other changes in employees wages, hours, or working conditions without affording the Union prior notice and an opportunity to bargain concerning such action.

WE WILL offer Robert Augustine, Vincent Cassarino, Coleen Darmofalski, Robert Banker, and William Kolendo immediate and full reinstatement to their jobs or, if such jobs no longer exist, to a substantially equivalent position without prejudice to their seniority or any other rights and privileges previously enjoyed, and make them whole for any loss of earnings and any other benefits suffered as a result of the unlawful action against them including their unilateral layoffs, the engineering work removal and reassignments and the discharge of Robert Augustine.

WE WILL provide the Union with information relevant and necessary to its representative duties towards employees in the following collective-bargaining units as requested by it on August 25 and 26, 1992:

All production and maintenance employees employed by Respondent at its Wallingford, Connecticut facility, excluding all office clerical employees, salesmen, professional employees, engineers, designers, draftsmen, plant managers, foremen and assistant foremen, guards and supervisors as defined in the Act.

All full-time and regular part-time drafters, drafter/designers and engineering clerks employed by Respondent at the Wallingford, Connecticut location, excluding all office clerical employees, and all professional employees, guards and supervisors as defined in the Act, and all other employees.

DAVIS ELECTRIC WALLINGFORD CORPORATION, AND MERRITT EXTRUDER CORPORATION